

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

FRANK MORRIS CROWLEY,)	
)	
Petitioner,)	
)	
vs.)	Case No. CIV-08-357-F
)	
DAVID PARKER, Warden,¹)	
)	
Respondent.)	

REPORT AND RECOMMENDATION

Petitioner, a prisoner appearing *pro se*, has filed a motion for leave to proceed *in forma pauperis* and supporting affidavit. Pursuant to an order entered by United States District Judge Stephen P. Friot, this matter has been referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B). Having reviewed said motion, the undersigned finds that Petitioner has sufficient funds to prepay the filing fee of \$5. Because he does not qualify for authorization to proceed without prepayment of the filing fee, it is recommended that Petitioner's motion [Doc. No. 2] be denied and that he be ordered to prepay the full \$5 filing fee for this action to proceed. 28 U.S.C. § 1915(a)(1). It is further recommended that this action be dismissed without prejudice to refiling unless Petitioner pays the \$5 filing fee in full to the Clerk of the Court within twenty (20) days of any order adopting this Report and Recommendation.

Petitioner is advised of his right to file an objection to this Report and Recommendation with the Clerk of this Court by May 1st, 2008, in accordance with

¹ The Petitioner named Justin Jones, the Director of the Oklahoma Department of Corrections, and Drew Edmondson, the Attorney General of the State of Oklahoma, as respondents. However, where the applicant is presently in custody pursuant to the state judgment in question, the state officer having custody of the applicant is the properly named respondent. Rule 2, Rules Governing Section 2254 Cases in the United States District Courts. Therefore, David Parker, Warden of the James Crabtree Correctional Center, has been substituted as the proper respondent.

28 U.S.C. § 636 and Local Civil Rule 72.1. Petitioner is further advised that failure to timely object to this Report and Recommendation waives the right to appellate review of both factual and legal issues contained herein. *Moore v. United States*, 950 F. 2d 656 (10th Cir. 1991).

ENTERED this 10 day of April, 2008.


BANA ROBERTS
UNITED STATES MAGISTRATE JUDGE